

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD REYNOLDS, ¹	§
	§
Respondent Below-	§ No. 20, 2010
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
WHITNEY REYNOLDS,	§ in and for New Castle County
	§ File No. CN07-03942
Petitioner Below-	§ Petition No. 07-28210
Appellee.	§

Submitted: August 6, 2010

Decided: October 19, 2010

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 19th day of October 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Ronald Reynolds (Husband), filed this appeal from a Family Court decision, dated December 21, 2009, denying his motion to reargue a final alimony order entered on August 21, 2009. We find no merit to Husband's appeal. Accordingly, we affirm the Family Court's judgment.

(2) The record reflects that the parties were married on December 2, 1988, separated on July 12, 2007, and divorced on February 8, 2008. On

¹ The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

January 22, 2008, the Family Court entered an award ordering Husband to pay Wife \$650 per month in interim alimony. Husband filed a motion to amend the interim alimony judgment because he had inadvertently excluded his mortgage payment as a line item in his monthly expenses.² Wife also filed a motion to reargue, contending that the Family Court had erred in failing to account for the fact that two other adults lived in Husband's house and should be contributing to the monthly expenses. After considering the respective motions, the Family Court altered its rationale but did not change the amount of the monthly interim alimony payment.

(3) On January 26, 2009, the Family Court held a hearing on matters ancillary to the parties' divorce. At the hearing, the parties indicated that they had reached an agreement regarding all ancillary issues except alimony.³ The testimony at the hearing reflected that, since the time of the interim alimony award, Wife's income and expenses had not changed. Husband, however, had voluntarily changed jobs and increased his salary by \$10,500. His new job required him to work twelve hour days in Maryland on Friday, Saturday, and Sunday. Because he did not want to sell his house

² The mortgage payment was reflected in Husband's total expenses but was not listed as a line item in his individual expenses; therefore, the Family Court had not included the mortgage in its calculation of Husband's monthly expenses.

³ After the January 2009 hearing, the parties filed a stipulation regarding property division, which was entered as an order of the Family Court on March 6, 2009.

in Delaware, Husband took an apartment near his new job and bought a new motorcycle to make the commute to his new job, thereby increasing his insurance costs. As a result of his voluntary job change, Husband's expenses since the interim alimony order had more than doubled. Husband continued to have his brother, his girlfriend, and his girlfriend's children living in his Delaware home.

(4) Wife also presented evidence regarding Husband's professional licenses, which included a master electrician's license, a master HVACR license, two boiler engineer's licenses, and two universal refrigeration certifications. Husband did not dispute that he had used his professional licenses to pursue side jobs during the course of the marriage but contended that he no longer was able to do so because of arthritis. Wife also presented evidence of Husband's personal website, which reflected that Husband was the owner and operator of a tattoo business and had done over 150 tattoos, photographs of which were included on his website. Husband denied that he made any income as a tattoo artist.⁴ At the end of the hearing, the Court reserved decision.

⁴ In response to the judge's inquiry, Husband indicated that he had completed the tattoos over the course of a 15 year period. He stated that each tattoo took a few hours to complete. In response to a question by the judge about his tattooing, Husband stated, in part, "You can't believe everything you read on the internet."

(5) Thereafter, in response to an inquiry from Husband's counsel, the Family Court held a teleconference on August 18, 2009. During the course of that teleconference, counsel informed the judge that the parties, without first seeking counsel's advice, had deviated from the property settlement order. The deviation, in part, led to Husband keeping a motorcycle that the parties initially had agreed to sell. The motorcycle had been purchased through a loan on Wife's 401K for which she continued to make payments of \$175 per month. Wife's loan payment had not been considered by the Court in its calculation of the interim alimony award.⁵

(5) On August 21, 2009, the Family Court issued its decision on alimony. The Family Court noted that both parties had a monthly deficit using the Fin Plan calculations. The trial court reduced the amounts of certain of Husband's expenses because the court did not find the claimed expenses reasonable or, in the case of Husband's mortgage, because other adults living in Husband's household were capable of contributing to household expenses. The trial court also noted that Husband's voluntary job change, which required him to work only three days a week, gave Husband more time to pursue paying side jobs, such as tattooing. The Family Court

⁵ Husband also had a loan against his 401K, which the Family Court had not considered in the interim alimony calculation. Both loans were considered in the Family Court's calculation of the final alimony award.

found that Wife was a dependent party under 13 Del. C. § 1512(b). In determining the amount of the alimony award, the Family Court considered all of the factors enumerated in 13 Del. C. § 1512(c).⁶ The Family Court found the most relevant factors to be Wife's financial resources and her inability to meet her reasonable needs independently, the length of the parties' marriage, and Husband's ability to meet his own needs while paying alimony. Ultimately, the Family Court ordered that Husband pay Wife \$650 per month, beginning September 1, 2009, but reducing his payment by \$15.50 each month until his payment was reduced to \$325. Thereafter,

⁶ That statute provides, "The alimony order shall be in such amount and for such time as the Court deems just, without regard to marital misconduct, after consideration of the relevant factors, including, but not limited to:

- (1) The financial resources of the party seeking alimony, including the marital or separate property appointed to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;
- (2) The time necessary and expense required to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;
- (3) The standard of living established during the marriage;
- (4) The duration of the marriage;
- (5) The age, physical and emotional condition of both parties;
- (6) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;
- (7) The ability of the other party to meet his or her needs while paying alimony;
- (8) Tax consequences;
- (9) Whether either party has foregone or postponed economic, education or other employment opportunities during the course of the marriage; and
- (10) Any other factor which the Court expressly finds is just and appropriate to consider.

Husband was ordered to pay \$325 per month for a period of seventy-six months.

(6) Husband filed a motion to alter the judgment or, in the alternative, to reargue. Among other things, Husband argued that the Family Court erred in considering the parties' uncounseled agreement to deviate from the property settlement order and that the Family Court improperly engaged in speculation when it found that Husband could earn extra income from his tattoo business. Husband also argued that he should be entitled to credit for alleged overpayments he made in interim alimony. After considering all of Husband's arguments and Wife's response thereto, the Family Court denied Husband's motion.

(7) In his opening brief on appeal, Husband reiterates the arguments he raised in the motion to alter the judgment denied by the Family Court. Husband does challenge the Family Court's finding that Wife was dependent. Instead, he challenges the trial court's consideration of improper and/or speculative evidence and the trial court's failure to immediately reduce his alimony obligation to \$325 per month and give him credit for the amount he claims he overpaid during the interim period.

(8) On appeal from a Family Court decision regarding alimony, this Court reviews both the law and the facts, as well as the inferences and

deductions made by the trial judge.⁷ We review conclusions of law *de novo*.⁸ If the Family Court correctly applied the law, we review under an abuse of discretion standard.⁹ The Family Court's factual findings will not be disturbed on appeal unless those findings are clearly wrong and justice requires their overturn.¹⁰ When the determination of facts turns on the credibility of the witnesses who testified under oath before the trial judge, this Court will not substitute its opinion for that of the trial judge.¹¹

(9) The record in this case reflects that the Family Court reviewed all of the factors relevant to determining an alimony award under 13 Del. C. § 1512(c) and included substantial citation to evidence in the record bearing on the relevant factors. Wife presented evidence at the hearing that Husband, during the course of the marriage, had made extra income as a tattoo artist. She presented Husband's own website as evidence that Husband held himself out to the public as an experienced tattoo artist. While the Family Court did not attribute specific income to Husband from this business, it noted that, given Husband's three-day work week at his regular job, he had time to pursue tattooing as a source of additional income

⁷ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁸ *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).

⁹ *Jones v. Lang*, 591 A.2d 185, 186-87 (Del. 1991).

¹⁰ *Forrester v. Forrester*, 953 A.2d at 179.

¹¹ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

if he experienced any shortfalls. Consideration of Husband's ability to meet his own needs while paying alimony was entirely proper under 13 Del. C. § 1512(c)(7). Although Father testified that tattooing had only been a hobby and that he could no longer pursue it due to arthritis, it was entirely within the Family Court's discretion to weigh the credibility of the testimony based on the evidence presented.¹² We find no error in the Family Court's conclusion that Father could return to tattooing as a means of making extra income if he experienced any shortfalls.

(10) Moreover, we reject Husband's contention that the Family Court erred in its alimony award by reopening the parties' property settlement. In fact, the evidence that the Family Court considered was an agreement reached by the parties after the property settlement and without the benefit of counsel. That agreement permitted Husband to keep a marital asset, a motorcycle, in exchange for Wife keeping some collectibles. Wife, however, continued to be responsible for repaying a loan that was taken against her 401K to purchase the motorcycle.¹³ The Family Court's

¹² *Id.*

¹³ To the extent Husband now argues for the first time in his opening brief that the loan against Wife's 401K was not used to purchase his motorcycle, we will not consider that claim as it was not presented to the Family Court in the first instance. *See* Del. Supr. Ct. R. 8 (2010).

consideration of this change in property division, which adversely affected Wife's monthly expenses, was entirely proper under 13 Del. C. § 1512(c)(1).

(11) Finally, we find no error in the Family Court's decision to gradually reduce Husband's monthly alimony obligation to follow the repayment schedule of Wife's 401K loan. The Family Court carefully considered the evidence and the relevant factors under Section 1512(c). We find no error or abuse of discretion in the Family Court's conclusion that a gradual reduction of Husband's alimony obligation was equitable under the circumstances of this case.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice